

10/510315

## INTERNATIONAL COOPERATION TREATY

**PCT****INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2002P03969WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/DE2003/000967	International filing date (day/month/year) 24 March 2003 (24.03.2003)	Priority date (day/month/year) 02 April 2002 (02.04.2002)
International Patent Classification (IPC) or national classification and IPC H04L 29/06		
Applicant	SIEMENS AKTIENGESELLSCHAFT	

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.

This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of \_\_\_\_\_ sheets.

3. This report contains indications relating to the following items:

- I  Basis of the report
- II  Priority
- III  Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV  Lack of unity of invention
- V  Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI  Certain documents cited
- VII  Certain defects in the international application
- VIII  Certain observations on the international application

Date of submission of the demand 27 October 2003 (27.10.2003)	Date of completion of this report 30 June 2004 (30.06.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.

PCT/DE2003/000967

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

 the international application as originally filed the description:

pages \_\_\_\_\_, 1-14, as originally filed

pages \_\_\_\_\_, filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

 the claims:

pages \_\_\_\_\_, 1-10, as originally filed

pages \_\_\_\_\_, as amended (together with any statement under Article 19), filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

 the drawings:

pages \_\_\_\_\_, 1/3-3/3, as originally filed

pages \_\_\_\_\_, filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

 the sequence listing part of the description:

pages \_\_\_\_\_, as originally filed

pages \_\_\_\_\_, filed with the demand

pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item. These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

 the language of a translation furnished for the purposes of international search (under Rule 23.1(b)). the language of publication of the international application (under Rule 48.3(b)). the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

 contained in the international application in written form. filed together with the international application in computer readable form. furnished subsequently to this Authority in written form. furnished subsequently to this Authority in computer readable form. The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished. The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.4.  The amendments have resulted in the cancellation of: the description, pages \_\_\_\_\_ the claims, Nos. \_\_\_\_\_ the drawings, sheets/fig \_\_\_\_\_5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	YES
	Claims	1-10 NO
Inventive step (IS)	Claims	YES
	Claims	1-10 NO
Industrial applicability (IA)	Claims	1-10 YES
	Claims	NO

## 2. Citations and explanations

Reference is made to the following documents:

- D1: US-B1-6 311 101 (KASTNER ENGELBERT) 30 October 2001  
(2001-10-30)
- D2: US-B1-6 353 853 (GRAVLIN KEITH ROBERT) 5 March 2002  
(2002-03-05)
- D3: EP-A-0 838 768 (HEWLETT PACKARD CO) 29 April 1998  
(1998-04-29)
- D4: KLESPER T: 'DER INTERNET-ZUGRIFF AUFS LON. WELTWEITER ZUGRIFF AUF DIE SENSORIK UND AKTORIK VON AUTOMATISIER-UNGS-PROJEKTEN', ELEKTRONIK, FRANZIS VERLAG GMBH, MUNICH, GERM., Vol. 47, No. 8, 14 April 1998 (1998-04-14), pages 60, 62, 64, 66, XP000780190 ISSN: 0013-5658
- D5: WEAVER A ET AL: 'Monitoring and control using the Internet and Java' INDUSTRIAL ELECTRONICS SOCIETY, 1999. IECON '99 PROCEEDINGS. THE 25<sup>TH</sup> ANNUAL CONFERENCE OF THE IEEE SAN JOSE, CA, USA, 29 NOV - 3 DEC 1999, PISCATAWAY, NJ, USA, IEEE, US, 29 November 1999 (1999-11-29), pages 1152-1158, XP010366722 ISBN: 0-7803-5735-3

1. Claims 1-10 are still unclear (PCT Article 6).

a) As the applicant himself states on page 5 of the description, a web server is a process (i.e. a

software/an algorithm) that runs on a computer.

However, the claims are not worded as either method claims or system claims, and so there is a lack of clarity with regard to category.

Although the applicant intended to draft claim 1 as a device claim by including "means for realizing" and "means for directly accessing", the examiner remains of the opinion that the claims cannot be clearly assigned to either of the permitted categories (method or system).

The word "means" refers to a software module that is clearly equivalent to a method and in no way represents device features despite the fact that a web server (i.e. a device) is supposed to be defined.

- b) Furthermore, as a result of this formulation ("means for realizing an automation functionality"), the independent claims are defined only by the result to be achieved and do not involve an inventive step (how this functionality is achieved and how access is achieved is not explained), which also leads to a lack of clarity (PCT Article 6).
- c) Even more confusion (lack of clarity - PCT Article 6) is caused by claims 9 and 10. Claim 9 discloses a "system with a web server" but claim 10 discloses a "method (computer program product) with a web server". Both claims are also unclear with regard to category and have not been defined by technical features.
- d) For the reasons stated above, the applicant is requested to take note of the following:

The requirement of clarity applies both to individual claims and to the set of claims as a whole. The clarity of the claims is of primary importance, since the claims determine the subject matter for which protection is sought. Therefore, the definition of the content of a claim should be as clear as possible from the wording of the claim alone. In view of the differences in the scope of protection that can be associated with the various categories of claims, it should be noted that the wording of a claim does not permit any doubt with regard to the category into which it falls.

2. When the description is consulted in order to understand the subject matter of claim 1, said subject matter does not appear novel (PCT Article 33(2)).
  - 2.1. With respect to all of the features of claim 1, document D1 (US-B1-6 311 101 (KASTNER ENGELBERT) 30 October 2001 (2001-10-30)), which is considered the closest prior art, discloses:  
a web server with software modules wherein at least one first software module has first means for realizing an automation functionality and second means for accessing a real-time operating system (see abstract; column 1, lines 45-65; column 2, lines 39-61; figure 3).
3. All of the features of claim 1 are also disclosed by documents D2 to D5.
4. The subject matter of claims 9 and 10 corresponds to that of claim 1 and also does not appear novel.

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5. The additional features of the dependent claims do not make a novel contribution to claim 1 because these features are also known from document D1.
6. The independent claims have not been worded in the two-part form with respect to document D1 (PCT Rule 6.3 (b)).